IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

AS.No. 289 of 1991()

APPELLANTS - PLAINTIFFS:
----

1. **MYSORE WINE PRODUCTS LTD., HAVING ITS REGISTERED OFFICE AT 24, GRANT ROAD, BANGALORE - 560 001 AND BRANCH OFFICE AT KURUSUPALLY ROAD, ERNAKULAM, COCHIN - 682 015.**

2. **PHIPSON AND COMPANY LTD., HAVING ITS REGISTRED OFFICE AT 6, OLD COURT HOUSE STREET, CALCUTTA-1 AND BRANCH OFFICE AT 10 KURUSUPALLY ROAD, ERNAKULAM, COCHIN - 15.**

BY ADV. SRI.L.GOPALAKRISHNAN POTTI

RESPONDENTS - DEFENDANTS:
----

1. **SANNIDHAN BAR AND RESTAURANT, CANNANORE A PARTNERSHIP FIRM ALSO KNOWN AS "SANNIDHAN TOURIST HOME" IN BUSINESS AND TRADE PARLANCE.**

2. **SMT. N. P. SUSEELA, D/O.KRISHNAN, AGED 51 YEARS, RESIDING IN MOOLAYIL HOUSE, NEAR N.S. TALKIES CANNAORE - 2.**

3. **N. LATHISH, S/O. M. BHARATHAN, AGED 29 YEARS, RESIDING IN SANNITHAN TOURIST HOME, CANNAORE. (DIED)**

   R3 DIED. THE APPELLANTS DO NOT WANT TO IMPLEAD THE LEGAL HEIRS OF R3 AS PER ORDER DATED 8.12.1998 IN APPEAL.

BY ADV. SRI.A.K.SRINIVASAN
SRI.N.S.MOHAMMED USMAN

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 7.6.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

==========

A.S. NO. 289 OF 1991

==========

Dated this the 7th day of June, 2007

J U D G M E N T

Plaintiffs in O.S. No.8 of 1988 on the file of the Ist Additional Sub Judge, Ernakulam are the appellants. Appeal is filed against the decree passed by the court below dismissing a suit filed by the appellants for realisation of a sum of Rs.39,346.60 with interest at the rate of 12% per annum. The first plaintiff was a wholesale dealer in foreign liquors. It supplied liquor to the first defendant on credit basis. Subsequently, the second plaintiff filed the suit alleging that the first plaintiff authorised the second plaintiff to collect amounts due to it from its debtors. It was alleged that as on 31.12.1984 an amount of Rs.39,346.60 was due from the first defendant to the first plaintiff. According to the plaintiffs there was a mutual, open and current account between the first plaintiff and first defendant and hence prayed for realisation of the aforesaid amount.

2. First defendant denied the entire transaction. It was contended that the first defendant did not purchase any

liquor from the first plaintiff on credit. It was further contended that the defendants were not having any FL-3 licence or any dealings with the plaintiffs. It was contended that the accounts produced were not proper and correct. It was also contended that the suit was barred by limitation and there was no demand from the first plaintiff. It was specifically contended that the alleged authorisation between the plaintiffs was not legal and proper. It was further contended that the second plaintiff cannot act on the basis of that authorisation.

3. The trial court found that the suit was not properly framed and it was hit by the provisions contained in Order VI Rules 14 and 15 CPC and also it was barred by limitation. Challenging the decree dismissing the suit, this appeal is filed.

4. Learned counsel for the appellants has strenuously argued before me that the finding of the court below that the suit as framed was not maintainable is illegal. It was argued that as there was no specific contention that the persons who have signed and verified the pleadings have no authority the appellants did not produce the authorisation. It is submitted that an opportunity may be given to the appellants to produce

the proper authorisation.

5. Even according to the appellants the cause of action arose on 31.12.1984. Suit was filed on 1.1.1988. It was dismissed on 28.2.1990 and the appeal is filed in the year 1991. It is also seen that one of the respondents died during the pendency of the appeal. I do not think it just and proper to remand the case after a long lapse of about 19 years to give an opportunity to the appellants to adduce evidence. The appeal was pending before this Court for more than 16 years. Appellants could have produced necessary documents at least before this Court. So the finding of the court below that the framing of the suit is bad is only to be confirmed. Since I uphold the finding of the court below that the framing of the suit is bad, I am not considering the question of limitation in this appeal. That issue is left open to be decided in appropriate proceedings.

Appeal is accordingly dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

==========

A.S. NO. 289 OF 1991

==========

J U D G M E N T

7TH JUNE, 2007